IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.670 OF 2002

Chairman Deshbakhat Ratnappa
Kumbhar Panchganga Sahakari
Sakhar Karkhana Ltd. & Another .. Appellants

versus

Maharashtra State co-operative
Rural Land Development Bank Ltd.
Kolhapur .. Respondent

...

Mr.C.G. Gavnekar for the appellant.

None for the respondent.

CORAM : D.G. KARNIK, J

DATED : 20th September 2006

P.C.:

1. By this appeal, the appellant challenges the order dated 20th May 2002 passed by Joint Civil Judge, Sr.Division, Kolhapur rejecting the appellant's application for an injunction.

2. Respondent is a co-operative bank. The respondent filed a suit bearing Special Civil Suit no.37 of 1999 in the Court of Civil Judge, Sr.Division, Kolhapur for recovery of a sum over Rs.8 crores repayment of which was guaranteed by the appellants. According to the respondent farmers in the villages in the command area of the appellant no.1 sugar factory were interested in promoting a scheme of Lift Irrigation of water for growing sugarcane in their lands. The appellants were also interested in promoting the said scheme as they would have received sugarcane for crushing in their factory. The respondent accordingly sanctioned loan to the various farmers who had promoted the Lift Irrigation Scheme and the repayment of loan was guaranteed by the appellants. As the farmers committed default in repayment of the loan, respondent bank filed a suit against the appellants as guarantors for recovery of the loan. In the said suit, respondent applied for attachment before judgement of the factory of the appellants. However, the attachment was refused. Respondent thereafter issued a public notice for auction of the Lift Irrigation Scheme. The appellants thereafter filed an application in the suit for an injunction restraining

the respondent from auctioning the Lift Irrigation Scheme. After hearing the parties, by an order dated 20th May 2005, the trial Judge dismissed the application and refused to grant injunction. That order is impugned in this appeal. Learned counsel for the appellant submitted that the respondent has no right to sell the assets of the Lift Irrigation Scheme pending hearing of the suit. He therefore submitted that trial Judge ought to have granted an injunction.

3. In order to get an injunction, the appellants must prima facie establish that the assets of the Lift Irrigation Scheme which was being auctioned belong to them. If the assets belong to the appellants, it may be necessary to consider whether the respondent has a right under a mortgage or otherwise to sell the assets without intervention of the court and without obtaining of a decree. If the assets do not belong to the appellants or belong to the third party viz. the farmers of the Lift Irrigation Scheme obviously the appellants cannot object to the sale because appellants would not be persons aggrieved. If the respondent bank take steps for recovery of the money from the primary borrowers, i.e. the farmers of the Lift Irrigation Scheme, the appellants as guarantors should hail such a

move because it would relieve them of the obligation of the guarantee to the extent of the recovery made. However, the appellants clearly appear to be motivated otherwise to stall the recovery from the farmer members of the Lift Irrigation Scheme.

4. The appellants have not produced any evidence before the trial court to show that it was the owner of the Lift Irrigation Scheme, i.e. to say the pump machinery, pump house and the network of pipeline supplying the water to individual farmers. In the circumstances, the trial Judge was right in rejecting the relief of injunction.

5. It appears that the appellants are indirect beneficiaries of the Lift Irrigation Scheme in as much as the farmers who receive the water use it for the growing the sugarcane which they supply to the sugar factory of the appellants. It appears that appellants are therefore interested in protecting the said Lift Irrigation Scheme though they have not fulfilled their obligation under the guarantee to make the payment. Therefore, in my view, the balance of convenience is also not in favour of the appellants. The trial court was therefore right in refusing the injunction.

6. In the circumstances, there is no merit in the appeal which is dismissed with costs.

7. At the request of the learned counsel for the appellant, ad-interim order granted by this court earlier shall continue for a period of two weeks.

8. Issuance of certified copy is expedited.

(D.G. KARNIK, J)